

# **EXHIBIT N**

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UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK  
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HACHETTE BOOK GROUP, INC.,  
HARPERCOLLINS PUBLISHERS LLC,  
JOHN WILEY & SONS, INC., and  
PENGUIN RANDOM HOUSE LLC,  
  
Plaintiffs,  
vs. Case No.  
1:20-cv-04160-JGK  
  
INTERNET ARCHIVE and DOES 1  
through 5, inclusive,  
Defendants.  
-----x  
  
VIDEOTAPED RULE 30(B)(1) AND RULE 30(B)(6)  
DEPOSITION OF HACHETTE BOOK GROUP  
CORPORATE DESIGNEE: SKIP DYE  
Remote Zoom Proceedings  
Thursday, November 18, 2021  
  
Job No. 4867650  
Reported By: Lynne Ledanois, CSR 6811  
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Videotaped deposition of SKIP DYE,  
taken in Lewes, Delaware, commencing at  
10:35 EST a.m., on Thursday, November 18,  
2021 before Lynne Ledanois, Certified  
Shorthand Reporter No. 6811

REMOTE APPEARANCES

Counsel for the Plaintiffs:

DAVIS WRIGHT TREMAINE LLP

BY: LINDA STEINMAN

Attorney at Law

4530 Wisconsin Avenue, NW

5th Floor

Washington, D.C. 20016

[lindasteinman@dwt.com](mailto:lindasteinman@dwt.com)

Counsel for the Defendant Internet Archive:

DURIE TANGRI LLP

BY: JESSICA E. LANIER

CORYNNE McSHERRY

Attorneys at Law

217 Leidesdorff Street

San Francisco, California 94111

[jlanier@durietangri.com](mailto:jlanier@durietangri.com)

ALSO PRESENT:

John MacDonnell, Videographer

Chelsea Gilchrist, Veritext Tech

Carolyn Foley, In-House Counsel Penguin Random  
House

1 website to their, as they call them, 11:08AM  
2 patrons? 11:08AM  
3 Q Yes. 11:08AM  
4 A Yes, I'm aware of the 11:08AM  
5 lending library. 11:08AM  
6 Q Okay. Is PRH aware of any 11:08AM  
7 quantifiable effect that the Internet 11:08AM  
8 Archive's digital lending library has 11:08AM  
9 had on PRH's revenues from books? 11:08AM  
10 A I'm aware of, as I work with 11:09AM  
11 my customers, I know that they -- many 11:09AM  
12 of my libraries that we work with also 11:09AM  
13 offer and reference the Internet 11:09AM  
14 Archive, that their books are 11:09AM  
15 available there. 11:09AM  
16 So I'm aware of the lending 11:09AM  
17 and it does affect our sales because 11:09AM  
18 then the libraries don't purchase 11:09AM  
19 those e-Books from us. 11:09AM  
20 Q Okay. When you say 11:09AM  
21 "customers," what are you referring 11:09AM  
22 to? 11:09AM  
23 A The aggregators act as our 11:09AM  
24 party to sell to libraries. So the 11:09AM  
25 libraries would be the customers to 11:09AM

1 the aggregators. 11:09AM

2 Q Got it. So when you used 11:09AM

3 "customers" in your previous answer, 11:09AM

4 were you referring to aggregators or 11:09AM

5 libraries? 11:09AM

6 A I'm referring to the 11:09AM

7 aggregators working with the 11:09AM

8 libraries. 11:10AM

9 Q Got it. So you said a 11:10AM

10 moment ago that you're aware -- I'm 11:10AM

11 just reading the transcript here, that 11:10AM

12 you're aware of the lending and it 11:10AM

13 does affect our sales because the 11:10AM

14 libraries don't purchase those e-Books 11:10AM

15 from us. 11:10AM

16 Is that documented, that 11:10AM

17 effect of sales that you've observed? 11:10AM

18 A Documented -- do you -- I'm 11:10AM

19 sorry, what do you mean by 11:10AM

20 "documented"? 11:10AM

21 Q I mean, is this -- let me 11:10AM

22 back up a little bit. 11:10AM

23 Is this the kind of thing 11:10AM

24 that is anecdotally reported to you or 11:10AM

25 is there data to support the statement 11:10AM

1 relationship with Open 12:15PM  
2 Library/Internet Archive" is the rest 12:15PM  
3 of that sentence. 12:15PM

4 Q Right. So do you recall 12:15PM  
5 what -- do you recall what their view 12:15PM  
6 of ownership was, DPLA, as you 12:15PM  
7 described in this email? 12:15PM

8 A At the time, I know -- I 12:15PM  
9 don't know how it's described in this 12:15PM  
10 email. I know that their view at this 12:16PM  
11 time, they had an ownership view, 12:16PM  
12 meaning the library bought the e-Book, 12:16PM  
13 not licensed the e-Book. 12:16PM

14 And we don't sell directly 12:16PM  
15 to libraries. We sell to aggregators, 12:16PM  
16 who then license our content to them. 12:16PM  
17 So they wanted to bypass that 12:16PM  
18 relationship with stuff. 12:16PM

19 Q And PRH's position is that 12:16PM  
20 when an e-Book is conveyed to a 12:16PM  
21 library, the library does not own that 12:16PM  
22 e-Book; is that right? 12:16PM

23 A The library has a license 12:16PM  
24 relationship between their aggregator 12:16PM  
25 and them, not with Penguin Random 12:16PM

1 Internet Archive instead of going 12:38PM  
2 through their legitimate means. 12:38PM  
3 Q Does PRH have any data to 12:38PM  
4 suggest that fluctuations in 12:38PM  
5 circulation or revenue are tied to 12:38PM  
6 titles being available on the Internet 12:38PM  
7 Archive? 12:38PM  
8 MS. STEINMAN: Objection. 12:38PM  
9 Go ahead. 12:38PM  
10 THE WITNESS: It's just 12:39PM  
11 common knowledge. If it's 12:39PM  
12 available someplace else -- if 12:39PM  
13 somebody is looking for it and 12:39PM  
14 it's available someplace else for 12:39PM  
15 them to check out, because it's 12:39PM  
16 not available from the library, it 12:39PM  
17 stands to reason that people who 12:39PM  
18 are wanting to read it will 12:39PM  
19 download it where they can get it. 12:39PM  
20 That patron, if they can't 12:39PM  
21 find it on their library's 12:39PM  
22 website, will go to Internet 12:39PM  
23 Archive and see it there and 12:39PM  
24 download it. 12:39PM

25



1 BY MS. LANIER: 12:39PM

2 Q Do you have evidence that 12:39PM

3 that occurred? 12:39PM

4 A I would say it's common 12:39PM

5 sense that if a reader wants to read, 12:39PM

6 they're going to try to find how to 12:39PM

7 read the book. 12:39PM

8 Q Okay. So you don't have 12:39PM

9 evidence then apart from common sense? 12:39PM

10 MS. STEINMAN: Objection. 12:39PM

11 Go ahead, Skip. 12:39PM

12 THE WITNESS: I don't 12:39PM

13 have -- I don't have any evidence. 12:39PM

14 BY MS. LANIER: 12:39PM

15 Q We sort of started talking 12:39PM

16 about this a little bit, but I do want 12:39PM

17 to talk about other factors that might 12:40PM

18 affect how a title would perform both 12:40PM

19 in terms of revenue and circulation. 12:40PM

20 Might the fact that -- I'll 12:40PM

21 list some ideas. You tell me if that 12:40PM

22 might affect a title or not. 12:40PM

23 The identity of the author 12:40PM

24 and whether the author has published a 12:40PM

25 book before? 12:40PM

1 about the University of Georgia, they 12:52PM  
2 have academic libraries at the 12:52PM  
3 University of Georgia. 12:52PM

4 So those libraries are 12:52PM  
5 affiliated with an academic school of 12:52PM  
6 learning. Usually they are funded by 12:52PM  
7 the school and/or state depending upon 12:52PM  
8 the type of institution they are, the 12:52PM  
9 type of academic library that they 12:52PM  
10 are. 12:53PM

11 Q And last but certainly not 12:53PM  
12 least, what is a school library? 12:53PM

13 A A school library is most 12:53PM  
14 associated with K through 12. But it 12:53PM  
15 could be pre-K as well. 12:53PM

16 This is a public school 12:53PM  
17 scenario where you have children who 12:53PM  
18 go to school and it's a library that's 12:53PM  
19 located in that school or libraries. 12:53PM  
20 The school can have multiple libraries 12:53PM  
21 that's in their school system. 12:53PM

22 Q Okay. Are you familiar with 12:53PM  
23 the term "perpetual access model"? 12:53PM

24 A Yes, I am. 12:53PM

25 Q What is that? 12:53PM

1           A       Perpetual access model is           12:53PM  
2       where the library in our case, the           12:53PM  
3       institution would actually work with           12:53PM  
4       an aggregator and then they would           12:53PM  
5       purchase the license right to have           12:53PM  
6       that in perpetuity to use and to           12:53PM  
7       license one book at a time.           12:53PM

8           Q       And it is a license, it is           12:54PM  
9       not a sale in that the library does           12:54PM  
10      not own the e-Book copy?           12:54PM

11          A       Again, the relationship is           12:54PM  
12      not between me and that library, it's           12:54PM  
13      between the aggregator and that           12:54PM  
14      library, so the aggregator's           12:54PM  
15      relationship is what they have.           12:54PM

16                  And most often, as I           12:54PM  
17      understand it, it is a license           12:54PM  
18      relationship that's made up of many           12:54PM  
19      responsibilities related to that, not           12:54PM  
20      only the rendering of the book.           12:54PM

21          Q       Under the perpetual access           12:54PM  
22      model, does the aggregator own the           12:54PM  
23      copy of the e-Book?           12:54PM

24                  MS. STEINMAN: Objection.           12:54PM

25                  THE WITNESS: So the           12:54PM

1 left? 7:19PM

2 MS. LANIER: I'm trying to 7:19PM

3 get through my questions. But 7:19PM

4 it's difficult with the repeated 7:19PM

5 standing objections, so -- 7:19PM

6 MS. STEINMAN: In terms of 7:19PM

7 the official count here, how much 7:19PM

8 time do we have left? I'm very 7:19PM

9 hungry. 7:19PM

10 VIDEOGRAPHER: The time on 7:19PM

11 the record as of now is six hours, 7:19PM

12 45 minutes. 7:19PM

13 MS. LANIER: Excellent. 7:19PM

14 Q Okay. Are you familiar with 7:19PM

15 the term "big five" in publishing? 7:19PM

16 A I'm sorry, Jesse, you broke 7:19PM

17 up at the end of that phrase. Did you 7:19PM

18 say -- what did you say? Repeat, 7:19PM

19 please. 7:19PM

20 Q No problem. Are you 7:19PM

21 familiar with the term "big five" in 7:19PM

22 publishing? 7:19PM

23 A I'm familiar with that term. 7:20PM

24 Q What does that term mean? 7:20PM

25 A The term means the big five 7:20PM

1	largest publishers in the United	7:20PM
2	States.	7:20PM
3	Q Do you know who are the big	7:20PM
4	five?	7:20PM
5	A It would be Penguin Random	7:20PM
6	House, Hachette, Macmillan,	7:20PM
7	HarperCollins and Simon & Schuster.	7:20PM
8	Q Have you heard publishers	7:20PM
9	who are not part of that group	7:20PM
10	referred to as a farm team?	7:20PM
11	A Excuse me?	7:20PM
12	Q Have you heard from the	7:20PM
13	publishers who are not part of the big	7:20PM
14	five referred to as a farm team?	7:20PM
15	A No, I have not heard that.	7:20PM
16	Q Okay. Do you have any -- do	7:20PM
17	you have any concerns about this	7:21PM
18	merger if it goes through?	7:21PM
19	MS. STEINMAN: Objection.	7:21PM
20	Mr. Dye, have you had	7:21PM
21	communications with counsel on	7:21PM
22	this subject?	7:21PM
23	THE WITNESS: I had	7:21PM
24	communications with counsel --	7:21PM
25	with counsel on this subject.	7:21PM

1 I, LYNNE M. LEDANOIS, a Certified  
2 Shorthand Reporter of the State of  
3 California, do hereby certify:

4 That the foregoing proceedings were  
5 taken before me at the time and place herein  
6 set forth; that a record of the proceedings  
7 was made by me using machine shorthand which  
8 was thereafter transcribed under my  
9 direction; that the foregoing transcript is a  
10 true record of the testimony given.

11 Further, that if the foregoing  
12 pertains to the original transcript of a  
13 deposition in a Federal Case, before  
14 completion of the proceedings, review of the  
15 transcript [X] was [] wasn't requested.

16 I further certify I am neither  
17 financially interested in the action nor a  
18 relative or employee of any attorney or party  
19 to this action.

20 IN WITNESS WHEREOF, I have this  
21 date subscribed my name.

22 Dated: 11/22/2021

23   
24

LYNNE MARIE LEDANOIS

25 CSR No. 6811